

Exhibit A

Transcript of Motions Hearing in

City of Cuyahoga Falls v. Zachary Knotts, 2025CRB00069

Held on February 3, 2025 in Stow Municipal Court

IN THE STOW MUNICIPAL COURT
COUNTY OF SUMMIT

CITY OF CUYAHOGA FALLS,)	CASE NO. 2025CRB00069
)	
Plaintiff,)	
)	JUDGE LISA COATES
vs.)	
)	MAGISTRATE JOHN W. CLARK
ZACHARY KNOTTS,)	
)	Volume 1 (of 1 volume)
Defendant.)	

- - -

APPEARANCES:

MATTHEW PLESICH, Assistant City Prosecutor,
On behalf of the City of Cuyahoga Falls.

LIAM R. HARRELL and MARSHAL PITCHFORD,
Attorneys at Law,
On behalf of the Defendant.

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BE IT REMEMBERED that upon the hearing of
the above-entitled matter in the Stow Municipal
Court, Summit County, Ohio, before the **HONORABLE**
JOHN W. CLARK, Magistrate Presiding, commencing
February 3, 2025, the following proceedings
were had, being a Transcript of Proceedings:

(MOTION TO DISMISS)

KELLEY E. SPEARS, RPR
Court Reporter

1 *****Monday, February 3, 2025

2 P R O C E E D I N G S

3 - - -

4 (Whereupon, a discussion was held off the
5 record.)

6 THE COURT: I know I granted you both
7 leave to file anything else response-wise up
8 until today.

9 Anything new get filed since the
10 31st?

11 MR. HARRELL: Nothing from defense,
12 Your Honor.

13 THE COURT: So I think I have
14 everything now. At least as I understand
15 the motion or the motions, the First
16 Amendment argument is primarily an oral
17 argument?

18 MR. HARRELL: Your Honor, that is --
19 that is absolutely correct. It's purely
20 facial. We'll -- I think we'd like to take
21 maybe just a quick detour into an as-applied
22 argument, but primarily that's facial. We
23 don't plan on introducing any evidence or
24 testimony.

25 THE COURT: So as I understand it,

1 that's, for lack of a better term, that's an
2 oral argument?

3 MR. HARRELL: Yes, sir.

4 THE COURT: The other part of the
5 motion, however, or the other motion that's
6 going towards the enforcement part is an
7 evidentiary hearing?

8 MR. HARRELL: Yes. And our
9 understanding is the sergeant is available
10 for testimony.

11 So defense would, I guess, offer --
12 we could do the First Amendment challenge
13 first.

14 THE COURT: Yeah, that's --

15 MR. HARRELL: Okay.

16 THE COURT: Yeah, that's my thought
17 that you guys argue that and then you move
18 into the evidentiary hearing as part of the
19 second -- what I'm considering the second
20 motion.

21 MR. PLESICH: I mean, as far as the
22 motion to dismiss, the second part, I don't
23 think he needs a prima facie case to even
24 have an evidentiary hearing.

25 THE COURT: Okay.

1 MR. PLESICH: I mean, there's two
2 prongs that I believe shows that it was -- I
3 think at the time he filed that motion, he
4 wasn't aware of the 911 call, but I think it
5 really relies on the fact that
6 discriminatory purpose or in the effect of
7 enforcement.

8 THE COURT: Okay.

9 MR. PLESICH: The fact that an
10 officer went out and investigated a crime
11 and charged somebody for a crime is a prima
12 facie case in and of itself that it was
13 discriminatory and it should be dismissed.

14 THE COURT: All right. Counsel,
15 anything you want to say in response to
16 that?

17 MR. HARRELL: Your Honor, we did go
18 over briefly that -- we think our motion
19 does lie out the prima facie case. Our
20 argument is not that the officers showed up
21 there out of the blue with a decision to
22 start citing people. We concede that there
23 is a 911 call.

24 I think we did -- we even mentioned
25 the 911 call in our motion, though at the

1 time we had not received it, so we referred
2 to it as a, I think, alleged 911 call.

3 One moment here.

4 MR. PITCHFORD: Just a brief
5 indulgence, Your Honor.

6 MR. HARRELL: So we concede that the
7 911 call at this point is authentic. We
8 have no reason to doubt that.

9 That being said, our argument is
10 essentially that the officer arrived at the
11 scene with sort of an inclination to cite
12 Mr. Knotts. He was then presented with
13 evidence that other similarly situated
14 persons were also in violation of the
15 statute, but only elected to cite
16 Mr. Knotts, and we would argue due to
17 Mr. Knotts' exercise of constitutionally
18 protected speech.

19 MR. PLESICH: Which is similar to the
20 scenario where an officer is doing a speed
21 detail and there's ten people speeding and
22 he decides to issue one ticket.

23 They have discretion, they used that
24 discretion that day, and the complaint in
25 that 911 call is specifically -- was very

1 specific as to who or what the noise
2 complaint was about.

3 THE COURT: I don't know that I get
4 there without actually hearing it. And I
5 guess at the end of the day, maybe I'll
6 change my mind. That's not what I'll
7 (unintelligible) at this point just to err
8 on the side of having the evidentiary
9 hearing as opposed to err not having.

10 Any other -- anything else that needs
11 attention right now before we start the
12 hearing?

13 MR. PITCHFORD: Is the sergeant here?

14 MR. PLESICH: Yes.

15 MR. HARRELL: Then I was --

16 MS. BANBURY: I was going to go OFFER
17 to get him. I'm one of the other
18 prosecutors. I was just sitting here
19 checking out --

20 MR. HARRELL: No, I was going to ask
21 the opposite. We would have invoked the
22 wrong witnesses.

23 So with that said, as long as he's
24 outside the courtroom, nothing further.

25 THE COURT: Is he the only witness we

1 anticipate?

2 MR. PLESICH: Yes.

3 MR. HARRELL: Yes.

4 THE COURT: All right. Very good.

5 All right. Go ahead and get him or somebody
6 get him.

7 MS. BANBURY: I'll get him and have
8 him sit outside (overlapping speakers) --

9 THE COURT: No, your client's welcome
10 to come in.

11 MR. PLESICH: Have him sit right
12 here.

13 MS. BANBURY: All right. And Chad --
14 we have an officer's son here from Cuyahoga
15 Falls shadowing, Chad's son. Is it okay if
16 I bring him in?

17 THE COURT: Okay.

18 MS. BANBURY: Thanks.

19 THE COURT: All right. This is
20 2025CRB0069, State of Ohio vs. Zachary
21 Knotts. Parties are all present today with
22 counsel.

23 We've had some preliminary
24 discussions on the record to the effect of
25 having a brief oral argument on the motion

1 to dismiss under the First Amendment. We
2 will then proceed, at least at this point,
3 with an evidentiary hearing on the motion to
4 dismiss for retaliatory (inaudible).

5 All right. Mr. Harrell, anything you
6 want to (inaudible) going forward with the
7 argument on your First Amendment argument?

8 MR. HARRELL: Nothing, Your Honor.
9 Defense is ready.

10 THE COURT: I'm sorry?

11 MR. HARRELL: Nothing, Your Honor.
12 Defense is ready to make the argument.

13 THE COURT: Go ahead. Go ahead.

14 MR. HARRELL: Would you prefer it
15 from the podium or here?

16 THE COURT: Wherever you're
17 comfortable. Just for the sake of the
18 hearing, you're welcome to get up and move
19 around, sit down, stand up. I'm okay -- as
20 long as you're not hostilely approaching
21 anybody, I'm okay.

22 MR. HARRELL: I think I can manage
23 that, Your Honor.

24 THE COURT: All right.

25 MR. HARRELL: I'm going to make a

1 brief argument, and I'll be frank, it is
2 largely a restatement of our motion. I'll
3 have a few additional argument (inaudible).

4 The United States Supreme Court in
5 *People of New York v Saia* made it clear that
6 megaphones, what may call loudspeakers, are
7 indispensable instruments of effective
8 public speech. And that really is what this
9 case is about, Your Honor. It's about
10 political speech. It is about public speech
11 in a public area. This is the core of the
12 First Amendment.

13 You do not -- this is a very high
14 school civis class romantic view of the
15 First Amendment to go into a public space
16 and make your voice heard. This is
17 absolutely protected speech. That does not
18 mean that it is immune from any and all
19 government regulation. That is not our
20 position.

21 Rather, when a law does implicate the
22 First Amendment, the -- as Your Honor, as
23 I'm sure you're aware, courts are supposed
24 to put different layers of scrutiny -- I'm
25 sorry -- I should say different levels of

1 scrutiny based on the nature of that
2 regulation.

3 The highest level of scrutiny is
4 strict scrutiny, which is a very exacting
5 standard. And you'll be very hard pressed
6 to find any appellate precedent that finds
7 any law has met that exacting standard. The
8 Supreme Court has listed a few of the
9 exceptions.

10 That does come into play when there
11 is a content-based discrimination. That is
12 when the government does not nearly look at
13 the time-place-manner of speech, but
14 actually does goes into the type of -- the
15 content of the speech.

16 That's -- and, of course, the Supreme
17 Court's right to be very hostile to those
18 strict regulations. That does get into
19 exactly what the First Amendment was
20 designed to stop; mainly censorship.

21 Now, the -- on first glance, the
22 ordinance at issue here does not necessarily
23 seem to discriminate on the basis of the
24 content. However, there is a notable
25 exception to the application. And that is

1 that it exempts governmental, educational,
2 religious, and charitable entities from
3 engaging in -- that the ordinance does not
4 apply to them on land owned by them or
5 anywhere else so long as the amplification
6 is done under the auspices of those
7 organizations.

8 So I want to be clear. First, this
9 is not a place -- time-place-manner. This
10 is not a place because the ordinance doesn't
11 say that charitable institutions can have
12 amplified speech on land owned or possessed
13 by them. It says they can do it anywhere;
14 anywhere in the county as long as it's not
15 under the auspices of their organization.

16 So this is not a place restriction.
17 This is a speaker-based restriction. And
18 the Supreme Court has actually explicitly
19 stated that a speaker-based restriction is,
20 of course, a content-based restriction.
21 Certain speakers tend to have certain types
22 of content. You could not get around -- you
23 could not say well, the blue party gets to
24 speak, but not the red party. Hey, we're
25 not looking at your content, we're just

1 looking at your speaker obviously.

2 In *Citizens United v FEC*, the Supreme
3 Court said that you cannot say that large
4 corporate entities are not allowed to speak,
5 but small individual entities are.

6 And certainly the same thing applies
7 here, if not more so, because we're actually
8 looking at the nature. This is a
9 content-based. Therefore, that exception
10 makes this ordinance a content-based
11 restriction.

12 Now, strict scrutiny is, very
13 briefly, there are the two prongs. First,
14 it must serve a compelling state interest.
15 And this does not serve any compelling state
16 interest.

17 The Supreme Court, when discussing
18 compelling state interests, they were
19 talking about some of the most extreme
20 examples of speech; restricting information
21 -- the dissemination of information that
22 would put into jeopardy national security,
23 or prohibitions on child sexual abuse
24 material. Those are compelling state
25 interests. Volume is not, and there is no

1 precedent that would indicate otherwise.

2 Additionally, it fails on the second
3 prong as well, which is that it must be
4 narrowly tailored. When the Supreme Court
5 discusses narrow tailoring, they're talking
6 about that you're leaving a handful of other
7 opportunities for speech that you are not
8 including protected -- any unnecessarily
9 precluding, I should say, protected speech
10 in your gamut; that you are really being
11 sensitive to narrowly attacking the type of
12 speech you wish to restrict.

13 Certainly national security is a
14 compelling interest, but you could not ban
15 an entire newspaper on that basis.

16 So the ordinance is not strict
17 scrutiny. Strict scrutiny is required
18 because this is a content-based restriction.

19 I'm going to also just briefly tack
20 on an argument about an as-applied
21 challenge. If Your Honor were to find that
22 this ordinance does meet constitutional
23 scrutiny, even an otherwise legitimate
24 constitutional law can still be
25 unconstitutional as applied if the way it

1 was used creates the same constitutional
2 issues.

3 Now, certainly her position is that
4 it doesn't even meet the -- doesn't even
5 pass the facial challenge so we shouldn't
6 get there.

7 But if Your Honor were to find that
8 it does meet that facial challenge, and the
9 government (unintelligible) applied
10 challenge, then the defense is going to
11 proffer that the way the Cuyahoga Falls
12 Police Department went about their job in
13 showing up and looking at someone who is
14 using a megaphone to make his political
15 speech heard and then punishing him for
16 that, even if that might technically satisfy
17 a statute, this is protected speech. This
18 is what the First Amendment protects.

19 Again, the amplification at issue has
20 been specifically addressed by the Supreme
21 Court, and they have found that it was not
22 just included in the First Amendment, but
23 they used the word indispensable instruments
24 of protected speech.

25 While certainly the defense would

1 concede that there is some sort of limit if
2 you were being so loud as to deafen the
3 people around you or cause physical injury,
4 we're not going to argue that that would
5 necessarily be protected speech.

6 But we are talking about a small
7 battery operated megaphone. I am getting
8 into the fact (unintelligible) agreed upon.
9 This -- the way -- even if Your Honor were
10 to find the statute meets -- passes the
11 facial challenge, certainly the way it's
12 applied this time.

13 Promised it would be a brief
14 argument. That's all I have.

15 THE COURT: All right. Thanks,
16 Counsel.

17 Mr. Plesich.

18 MR. PLESICH: Thank you, Your Honor.
19 In response to that, I'm going to focus on
20 the -- not on the message, but on the noise,
21 because I think this is what this is really
22 about.

23 *Ward v Rock* (unintelligible) states
24 that municipalities may impose
25 time-manner-place restrictions on protected

1 speech provided that they are content
2 neutral, narrowly tailored, and leave open
3 ample alternatives for communicating that
4 message. And that's exactly what this
5 statute does in practice and on paper.

6 The fact that protecting citizens
7 from unwanted noise has been repeatedly held
8 to be a content-neutral justification for
9 laws. And there's two cases, *State v Dorso*
10 and *Boos v Barry*.

11 And so there is a significant
12 government interest here to protecting
13 citizens from unwanted noise. And that's
14 exactly what was recorded and charged that
15 day based on the report.

16 The fact that this very narrowly
17 tailored ordinance (unintelligible)
18 significant government interest and the
19 State may act to protect even traditional
20 public forums such as streets and parks from
21 excessive noise. And that's also *Ward v*
22 *Rock Against Racism*.

23 And in this particular case, a third
24 prong alternative -- ample alternatives. If
25 you look at the facts of this case, it's

1 been out there prior to and after this issue
2 has come up again. They've been getting
3 their message out as they wished to get it
4 out leaving ample alternatives.

5 By dismissing this action, it would
6 basically cripple cities from imposing any
7 strict restrictions on noise. I think the
8 Defendant's mislead into believing that the
9 officers were out there trying to stifle the
10 message.

11 They got a specific report. It was
12 about loud noise. They went out and
13 investigated that noise.

14 They did look at both sides of the
15 issue. He claimed that there's another side
16 out there creating some type of noise. That
17 may be true. That's not the complaint that
18 came into the station, and that's not the
19 complaint that was investigated.

20 When they got there and investigated,
21 they didn't just walk up, charge this
22 individual for any reason other than the
23 megaphone that was reported. They did
24 review other people that were out there
25 creating some type of noise and determined

1 that that didn't rise to the level of any
2 charges.

3 THE COURT: All right. Brief
4 rebuttal?

5 MR. HARRELL: Thank you, Your Honor.
6 I'd like to just real quick touch on *Ward v*
7 *Rock Against Racism*. The -- that case had
8 to do an intermediate scrutiny analysis
9 because the Supreme Court had found that it
10 was a time-place-manner restriction.

11 Even those get a heightened level of
12 analysis, intermediate scrutiny. But the
13 reason that the court is using the word
14 significant government interest rather than
15 compelling is just that.

16 When you are engaging in a
17 content-based restriction, which *Ward v Rock*
18 *Against* found not to have been, then -- when
19 you are engaging in the content-based, you
20 get the highest level of scrutiny, strict
21 scrutiny, and it goes from merely being a
22 significant government interest to a
23 compelling government interest.

24 And then I would just again point out
25 that the idea that this ordinance leaves

1 ample opportunity for alternative speech, I
2 think that's really a point in question,
3 because without any sort of amplification,
4 it is not clear what -- again, assuming that
5 what the Supreme Court said in Saia is
6 correct, that Mr. Knotts' political speech
7 is entitled to some degree of amplification,
8 it's not clear on the current wording of the
9 statute how it is you get to the ample
10 opportunity for other types of speech.

11 THE COURT: All right. All right.
12 Then we'll move on to the discriminatory
13 enforcement.

14 You think we need any opening
15 argument for that, or we -- or opening
16 statement for that, or you just want to jump
17 in and reserve it all for closing?

18 MR. PLESICH: I don't need any
19 opening.

20 MR. HARRELL: We're fine to reserve,
21 Your Honor.

22 THE COURT: Yeah, I'm thinking it's
23 probably better as a wrap-up then a -- all
24 right.

25 Officer, I'm going to have you raise

1 your right hand for me.
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1 BRAD DOBNEY

2 a witness herein, called on behalf of the
3 Defendant, having been first duly sworn as
4 provided by law, was examined and testified
5 as follows:

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: All right. And have a
8 seat there on that blue bench.

9 As soon as he gets settled, you can
10 proceed, Counsel.

11 DIRECT EXAMINATION

12 BY MR. HARRELL:

13 Q. Good afternoon.

14 A. Afternoon.

15 Q. Do you mind telling us your name and what
16 you do for a living?

17 A. I'm Sergeant Brad Dobney, badge number
18 7194, of the Cuyahoga Falls Police
19 Department.

20 Q. And how long have you been with the
21 Cuyahoga Falls Police Department?

22 A. Seven years, and I'm going to say like
23 seven-ish months.

24 Q. And -- let's see. And how -- of those
25 seven years, how long -- how many of those

1 have been as a sergeant specifically
2 (inaudible)?

3 A. None of the years. About four months.

4 Q. Well, congratulations.

5 And were you -- let's see. I
6 apologize. Brief apologies, Your Honor.

7 Were you working in that capacity
8 on December 28th -- I want to make sure I
9 got that day right -- of 2024?

10 A. Yeah. The 28th of December of '24, I
11 would have been a sergeant by then, yes.

12 Q. And did you have the opportunity to
13 investigate my client, Mr. Zach Knotts,
14 for any infractions?

15 A. I responded to a call, yes.

16 Q. All right. And what exactly was the
17 nature of the call that you heard?

18 A. The call that I heard go out over the
19 radio and then checked on the call notes
20 on my screen was for a report of a man
21 with a megaphone making noise at the
22 women's clinic.

23 Q. Did you learn the nature of the report,
24 how the report had been made, or --

25 A. I'm -- I'm not tracking with you.

1 Q. Did you know it was a 911 call at the
2 time?

3 A. The call just shows up on my screen, sir.
4 Dispatch gives it to me, I read the call
5 notes.

6 Q. Okay. And to the best of your
7 recollection, what did the call notes say?

8 A. The call notes said that there was a male
9 with a megaphone making noise at the
10 corner there near the women's clinic and
11 that the caller was annoyed by that and
12 wanted it checked out. The best of my
13 recollection. I can't quote the call
14 notes for you, sir.

15 Q. That's fine.

16 Do you remember if there's any
17 other physical description of the suspect
18 other than male?

19 A. I don't recall. I don't believe there
20 was.

21 Q. And what was the location again?

22 A. The women's clinic, sir, on State Road.

23 Q. Okay. Are you familiar with the Women's
24 Clinic?

25 A. I know where it is. It's in my city.

1 Q. Do you know what types of -- do you know
2 what types of procedures are performed
3 there?

4 A. I have at best a vague understanding.

5 Q. Can you tell us what that vague
6 understanding is?

7 A. It's -- I understand it's a women's
8 clinic. I believe -- I've never even been
9 inside the doors. Honestly, I can tell
10 you what I've heard it does, but it would
11 be speculation on my part.

12 Q. What have you heard that it does?

13 A. I've heard that they perform abortions
14 there and also help pregnant women find
15 other resources.

16 Q. Okay. And to be clear, had you heard that
17 before or after December 28th?

18 A. Before, sir.

19 Q. Okay. Do you remember approximately what
20 time you arrived -- well, first, did you
21 proceed to the women's clinic?

22 A. Yes. I added myself onto the call -- I
23 was not initially dispatched to it -- and
24 went there.

25 Q. Okay. And do you recall approximately

1 what time you went there?

2 A. It would've been before noon, sir, but I
3 can't tell you the time.

4 Q. And can you please describe the scene of
5 the women's clinic when you arrived?

6 A. Yeah. Patrolman Oldman [sic] heard
7 (unintelligible) -- Oldham was there.
8 Patrolman Paratore I believe arrived right
9 around the same time I did as Patrolman
10 Bullock.

11 We walked up. There was a group of
12 people in front of the clinic like near
13 the doors, and then a group of people out
14 on the sidewalk.

15 Q. Were you alone or did you have a partner
16 with you?

17 A. I believe I walked up with Paratore, sir.

18 Q. With Paratore?

19 So including you and Paratore, how
20 many uniformed Cuyahoga Falls Police
21 Department officers were at that location?
22 And I'm (inaudible) at the door
23 (unintelligible).

24 A. There would've been four of us. There
25 would've been me, Bullock, Paratore and

1 Oldham.

2 Q. And then were there any Cuyahoga Falls
3 Police Department officers not
4 (inaudible)?

5 A. No, sir.

6 Q. Okay. All right. What did you do next to
7 proceed with your investigation?

8 A. As I knew I was looking for a male with a
9 megaphone, I identified a male with a
10 megaphone. I then walked over and spoke
11 with Patrolman Oldham, asked him as to
12 what was going on, tried to verify the
13 complaint that had come in. I'm sorry.

14 I was able to verify the complaint
15 that come in, and he told me that he had
16 recorded it. We proceeded with a
17 disorderly conduct.

18 Q. Did you view or otherwise receive that
19 recording?

20 A. Of his recordings?

21 Q. Yes, it's Oldham's recordings?

22 A. At some point in time that day I had seen
23 a recording. I can't tell you if I saw it
24 on his phone or if somebody else had it.

25 Q. Did you see a recording before or after

1 the citation of Mr. Knotts?

2 A. It had been before.

3 Q. Okay. And to the best of your knowledge,
4 that was Officer Oldham's -- is that
5 right, officer or patrolman? Sorry.

6 A. We use them interchangeably. Technically
7 per our contract we're patrolmen, sir.

8 Q. Okay. Is that -- and to the best of your
9 knowledge, the recording you saw had been
10 recorded by Patrolman Oldham?

11 A. The best of my knowledge. I can't swear
12 to that.

13 Q. All right. Did you speak with any other
14 -- and let me be clear.

15 Before the issuance of the
16 citation, did you speak with any other
17 witnesses or learn anything else about my
18 client's alleged actions?

19 A. I don't believe so, sir.

20 Q. All right. So when you arrived, you saw
21 my client, and you're saying with a
22 megaphone?

23 A. Yes, sir.

24 Q. Did you see my client use the megaphone?

25 A. No, sir, I did not.

1 Q. All right. So you saw my client with the
2 megaphone. You spoke to Patrolman
3 Oldham --

4 A. Uh-huh.

5 Q. -- and you observed the recording that to
6 the best of your knowledge had been
7 recorded by?

8 A. Yes, sir. I believe his report also
9 indicates that he recorded things on his
10 body cam as well. I was not able to view
11 those at the time.

12 Q. Okay. Were you aware that he had made
13 those recordings?

14 A. Yes, sir.

15 Q. Did you have any other reports of any
16 other disorderly conduct? And I don't
17 mean necessarily in the strict legal
18 definition. Let's use more generally.

19 Any conduct that would warrant a
20 citation?

21 A. I just had the call, sir.

22 Q. You had not heard any reports or comments
23 about threats or other noisy activity?

24 A. Not until I arrived on scene, sir.

25 Q. Okay. And did you hear any after you'd

1 arrived on scene?

2 A. I believe it was the Defendant's wife said
3 that other people had been making noise as
4 well.

5 Q. Is that the only substance of the
6 (unintelligible) that you remember?

7 A. She said something about them saying
8 threatening things as well, I believe.

9 Q. In Cuyahoga Falls, is there any ordinance
10 that you're aware of that would make
11 threatening behavior actionable or
12 something you can cite?

13 A. It would have to rise to the level of
14 menacing, sir.

15 Q. Can you please describe what your
16 understanding of menacing is?

17 A. Menacing would have to be an actionable
18 threat that people perceived as a threat
19 and was not offered conditionally.

20 Q. This woman who you believe to be the
21 Defendant's wife, did her report rise to
22 that level in your opinion?

23 A. No, sir.

24 Q. Did you ask any follow-up questions to
25 determine if that behavior might rise to

1 that level?

2 A. I gave -- went with the fact pattern she
3 gave me, sir.

4 Q. Other than my client, his wife, and the
5 four officers, was anyone else that you
6 remember on scene?

7 A. There were quite a few people there, yes.

8 Q. Can you tell me about some of the people
9 you remember?

10 A. I know that there was a group of people
11 near the door. I do not know any of their
12 names. And I know that there was group of
13 people on the sidewalk.

14 Q. Let's start with that group of people by
15 the door. Can you describe them? Did
16 they appear to be in a group?

17 A. Yes.

18 Q. Okay. How did you know they were together
19 in a group?

20 A. They were all standing together in a
21 group.

22 Q. Were they -- were there any other
23 indications they were together?

24 A. I mean, they were a group of people
25 together. I'm not quite certain what

1 you're looking for. They weren't wearing
2 matching uniforms or bracelets or
3 something that said we're a group.

4 Q. There was no matching uniforms?

5 A. They have -- they might have had traffic
6 vests or something like that on. Maybe
7 orange shirts.

8 Q. Okay. Did -- did all of them have orange
9 traffic vests on?

10 A. I couldn't tell you that.

11 Q. Was this proof of people doing anything
12 else that you remember other than wearing
13 orange vests?

14 A. They were hanging out near the door
15 (overlapping speakers) -- no, go ahead.

16 Q. Were they making any noise?

17 A. While we were there -- and apologies.
18 I've been out there several times, so I
19 can't remember on that specific situation.
20 I don't remember if they were yelling back
21 and forth that time or other times I've
22 been out there, but they weren't standing
23 there silently, no.

24 Q. Did they have any instruments or other
25 means of amplification to your knowledge?

- 1 A. Again, sir, I've seen them with kazoos
2 before. Whether they had them
3 specifically on the 28th of December, I
4 don't know.
- 5 Q. Anything else you remember about that
6 group?
- 7 A. I think they had umbrellas.
- 8 Q. All right. I'd like to talk about the
9 other group, you said the group on the
10 sidewalk.
- 11 A. Yes, sir.
- 12 Q. Was -- who do you know was in that group?
- 13 A. Your client, sir.
- 14 Q. Anyone else?
- 15 A. I'm assuming that his wife had initially
16 stood there. I think I made contact with
17 her over by Patrolman Paratore's car.
- 18 Q. Anyone else?
- 19 A. Not that I could identify, sir.
- 20 Q. Okay. And did anything stand out to you
21 about this group of people?
- 22 A. They were -- like I said, the groups were
23 verbally interacting with each other.
24 They did not seem to be friends.
- 25 Q. I understand.

1 What, if anything, do you remember
2 about the verbal interactions?

3 A. They were hostile.

4 Q. Were they political in nature?

5 A. At that point in time they were just
6 yelling back and forth at each other. The
7 content of it I'm not entirely certain. I
8 was trying to help Patrolman Paratore.

9 Q. Did you have any inclination as to what
10 those arguments were about?

11 A. I'm fairly certain that one side was pro
12 choice and the other side was pro life.

13 Q. Did you speak -- well, let's back up.

14 You spoke with Patrolman Oldham?

15 A. Yes, sir.

16 Q. I think you've done a good job describing
17 the scene as you approached it.

18 Did you speak with -- and I may
19 have asked this already, I apologize. Did
20 you speak with anyone other than Patrolman
21 Oldham between when you arrived and citing
22 my client?

23 A. I'd have to watch my body cam, sir.

24 Q. Understood. What happened after you cited
25 my client?

1 A. I didn't cite your client.

2 Q. Oh, sorry.

3 Was my client cited?

4 A. Yes, sir.

5 Q. By whom?

6 A. Patrolman Paratore.

7 Q. Patrolman Paratore.

8 And that was just -- from my
9 recollection, that was the partner I think
10 you had arrived with. Is that true?

11 A. He and I walked up together. Sir, we
12 don't work in partners in Cuyahoga Falls.

13 Q. Understood. Were you present when
14 Patrolman Oldham cited Mr. Knotts?

15 A. Patrolman Paratore?

16 Q. Thank you.

17 Were you present when Patrolman
18 Paratore cited --

19 A. I was standing outside the vehicle with
20 Patrolman Bullock and the woman I believe
21 is Mrs. Knotts.

22 Q. After Mr. Knotts was cited, did you
23 continue to investigate anyone else at
24 that scene?

25 A. They -- I believe they left the scene. I

1 wished them to have a safe day. I spoke
2 with Patrolman Oldham again. I spoke with
3 the people at the front door, advised them
4 of the reason for the citation.

5 Q. Why did you speak to the people at the
6 front door?

7 A. Because I wanted to talk to them, too, to
8 keep this from rising to some sort of
9 fight.

10 Q. What did you tell -- what specifically do
11 you remember that you told the people at
12 the door?

13 A. I cannot specifically quote myself.

14 Q. Do you remember if they told you anything?

15 A. I think they conveyed that this has been
16 going back and forth for a while. But
17 again, these incidents have kind of run
18 together.

19 MR. HARRELL: Your Honor, may I have
20 a brief moment to confer?

21 THE COURT: You may. Certainly.

22 MR. HARRELL: We are -- no further
23 questions at this time, Your Honor.

24 THE COURT: All right. Mr. Plesich.

25 MR. PLESICH: Thank you.

1 CROSS-EXAMINATION

2 BY MR. PLESICH:

3 Q. Sergeant Dobney, now, you testified that
4 you were responding to a 911 call that
5 day?

6 A. Yes, sir, a dispatched call.

7 Q. And a call came across your screen
8 (inaudible). Have you since learned where
9 that call came from?

10 A. I believe I was told that it was an
11 anonymous caller who lived nearby.

12 Q. Okay. So somebody from in their home?

13 A. That's what I've been lead to believe,
14 yes, sir.

15 Q. Okay. And prior to that incident, I think
16 were you out there earlier that day at
17 all?

18 A. Again, these start to run together in my
19 head. I may have been.

20 Q. Have you been out there in the past?

21 A. I have been, yes.

22 Q. How many times in the past have you been
23 out there through the years?

24 A. Through the years, not as many because
25 I've worked nights, thankfully. Recently

1 probably just about every Saturday.

2 Q. Okay. And what's the mood and the
3 atmosphere out there?

4 A. Charged.

5 Q. Charged?

6 A. Yes.

7 Q. Does that concern you in any way as a
8 police officer?

9 A. It does, yes.

10 Q. And why?

11 A. I don't want to see -- I've been told that
12 some of the people out there are armed. I
13 don't want to see any sort of violence
14 occur, certainly not next to
15 a (inaudible).

16 Q. And what is the nature of that area
17 through there?

18 A. High traffic. Busy. It's a business
19 area.

20 Q. But you testified there's a home nearby?

21 A. Yeah. Backed up off the other side of
22 State Road is a residential area that sits
23 almost directly behind the businesses that
24 are there.

25 Q. Now, are you aware of any other reports

1 that came out that morning regarding that
2 location?

3 A. I am not.

4 Q. You were on duty though?

5 A. Yes.

6 Q. Would you have heard it if it did come
7 out?

8 A. Yes.

9 Q. And you were the sergeant on duty?

10 A. Yes.

11 Q. And so that particular day you were
12 responding specifically you testified to
13 someone with a megaphone?

14 A. Yes.

15 Q. And through the course of your experience
16 and duties, what would you do to
17 investigate or deal with that situation?

18 A. Generally with a call like that that comes
19 in, we try to verify if it's true to begin
20 with; you know, look for somebody that has
21 a megaphone, speak with somebody else on
22 scene.

23 Obviously I chose another police
24 officer that was on scene because I trust
25 Patrolman Oldham, and verify that the

1 things that had been reported he had also
2 seen, and went from there.

3 Q. So let's back up a second.

4 The 911 came in as a noise
5 complaint, right?

6 A. Yes.

7 Q. Now -- and was it anonymous you said?

8 A. I believe so.

9 MR. HARRELL: Objection, Your Honor.
10 At this point, things that the officer
11 learned after the citation really aren't
12 relevant.

13 MR. PLESICH: I think he testified to
14 that earlier.

15 THE COURT: All right. I'll allow
16 it.

17 Go ahead.

18 BY MR. PLESICH:

19 Q. So with the noise complaint, I'm going to
20 scratch that.

21 So you go out and investigate any
22 type of call that comes in?

23 A. Yeah.

24 Q. You rely on the 911 call to sign charges?

25 A. No.

1 Q. So what do you do to get to that point?

2 A. We go verify that what the 911 caller or
3 our dispatch call is reporting has
4 actually happened.

5 Q. So you went out to this location and you
6 saw some things. Did you hear anything?
7 Did you hear the megaphone?

8 A. I did not hear the megaphone.

9 Q. And how many people out there had a
10 megaphone?

11 A. One.

12 Q. So what did that lead you to believe?

13 A. That he was the one the call was about.

14 Q. Okay. And so when you went out there, was
15 he not using it at that point?

16 A. I believe he had it down by his side.

17 Q. And had you had any other interactions
18 with this individual prior to then?

19 A. Never met him before.

20 Q. You never met him, didn't know him?

21 A. I had no idea who he was, sir.

22 Q. And you've investigated noise complaints
23 before, correct?

24 A. Yes.

25 Q. And what do you base your determination on

1 when you make a determination to cite
2 somebody for a noise complaint?

3 A. My knowledge of the ordinance. Again,
4 whether it's something that we can verify,
5 especially if it just comes in as a call,
6 there's not somebody standing there. And
7 whether it's verified and then whether it
8 violates the ordinance.

9 Q. And so there were some allegations of
10 other individuals being noisy out there.
11 And did you investigate that?

12 A. We looked into it, but again, we had not
13 received any calls about that.

14 Q. It sounds like you spoke to a lot of
15 people out there that day?

16 A. I -- yeah.

17 Q. And there were other officers out there
18 and they spoke to these individuals?

19 A. Yes.

20 Q. Did they issue any other citations based
21 on their conversations?

22 A. No.

23 Q. How many citations were issued that day?

24 A. One.

25 Q. And do you know what was being said

1 through the megaphone?

2 A. I have no idea.

3 Q. And would that have changed your
4 decision --

5 A. No.

6 Q. -- on a citation?

7 A. No.

8 Q. What was the focus of your citation that
9 day?

10 A. To address the call for service that come
11 in, the complaint noise being made, and to
12 take enforcement action to make that stop.

13 Q. And as far as you know, did that noise
14 complaint come from that property?

15 A. From somebody on that property?

16 Q. Or the center itself?

17 MR. HARRELL: Objection.
18 Speculation.

19 THE COURT: Sustained.

20 BY MR. PLESICH:

21 Q. Are you aware of where that call came
22 from?

23 A. I am now, yes.

24 MR. PLESICH: No further questions.

25 THE COURT: All right. It seems odd

1 to say redirect to the person that's not the
2 prosecutor, but go ahead.

3 MR. HARRELL: Our witness.

4 THE COURT: Yeah. A little
5 different.

6 REDIRECT EXAMINATION

7 BY MR. HARRELL:

8 Q. Sergeant, I am kind of confused. Hoping
9 you can clarify some things.

10 A. Okay.

11 Q. I'm going to go -- my colleague on the
12 other side asked if you had received other
13 noise complaints, and you said that you
14 had looked into it; is that right?

15 A. Looked into whether I'd received other
16 ones?

17 Q. That you had received other noise
18 complaints, and you said you looked into
19 them?

20 A. Yeah.

21 Q. Earlier I asked if you had received other
22 complaints, and to my recollection, you
23 told me the only one you recalled was
24 Mr. Knotts' wife?

25 A. Yes.

1 Q. Is that right?

2 A. Yeah.

3 Q. Are there any other noise complaints
4 otherwise on December 28th that you are
5 aware of?

6 A. Are you talking about other calls for
7 service?

8 Q. Any complaint you received or were aware?

9 A. I was aware of the one that was the reason
10 I went there. And then as I mentioned to
11 you, your client's wife also complained
12 about the noise the other people were
13 making.

14 Q. All right. So when the prosecutor asked
15 you about their investigations and you
16 said you looked into it, to which
17 allegations were you referring?

18 A. I'm not following what you're asking me
19 here. I've said those are the two that
20 I'm aware of.

21 Q. Again, when the prosecutor asked you did
22 you hear other noise complaints and did
23 you look into them, you responded you
24 looked into it; is that correct?

25 A. That's in reference to the ones that

1 Mrs. Knotts made.

2 Q. All right. But earlier when I asked you
3 if you asked any follow-up questions, you
4 told me you went with the facts you had,
5 which were the threats did not lead to
6 that menacing level.

7 So I guess my question is is to
8 what -- what does that mean you looked
9 into?

10 A. Are you asking about noise complaints or
11 are you asking about menacing?

12 Q. Let's back up.

13 How many complaints, any specie,
14 did -- do you remember from December 28th?

15 A. I received one call for service.

16 Q. Okay.

17 A. And then I received two that had no
18 grounds, one for, I guess, threats, if
19 that's what you want to call it, and one
20 complaining about the other people there.

21 Q. And this is the case that you looked into
22 the call for service, and that would be --
23 by looked into, I mean, you identified the
24 man with the megaphone, asked for
25 corroborating evidence?

1 A. I investigated the call for service, yes.

2 Q. Did you investigate Mrs. Knotts'
3 complaints too (inaudible)?

4 A. Neither of those rose to the level that
5 required more than just standing there and
6 observing what I could observe looking
7 into it.

8 Q. Okay. So by looking into it -- I want to
9 clarify -- you mean standing there and
10 perceiving it?

11 A. Talking with her, yes, and perceiving.

12 Q. I just want to be clear about the nature
13 of the two investigations. Thank you.

14 Also when the prosecutor asked you
15 if you spoke to a lot of others, I think
16 that also confuses me.

17 I remember you speaking to
18 Mrs. Knotts.

19 A. Uh-huh.

20 Q. I remember you speaking to Patrolman
21 Oldham --

22 A. Uh-huh.

23 Q. -- And viewing his video.

24 I also, I guess, remember you
25 speaking to the group at the door

1 afterwards?

2 A. Uh-huh.

3 Q. Are there any others that you spoke with?

4 A. Just Paratore and Bullock, sir.

5 Q. Okay.

6 A. I don't --

7 Q. Now, finally he asked if you were familiar
8 at all with the words that my client may
9 have been using in the megaphone?

10 A. Correct.

11 Q. And you said you had no idea?

12 A. None.

13 Q. Earlier when I asked you if you thought
14 that the conversation might be political,
15 you mentioned you were fairly certain that
16 one side was pro life, one side was pro
17 choice?

18 A. Yes.

19 Q. How are you certain?

20 A. Like I said, I'm fairly certain so I --
21 but I could, I guess, deduce from the
22 signs that the one group was holding that
23 they are pro life, and given the hostile
24 attitude towards the other group, could
25 deduce that the other side was pro choice.

1 Q. So you did have some idea what he would
2 have been saying?

3 A. No clue what he said into the megaphone.

4 Q. I'm not asking you to -- I'm not asking
5 you to speculate right now what he would
6 have said. I guess I'm asking, wouldn't
7 the same things that have brought you to
8 the conclusion that one side was pro
9 choice, one side was pro life, wouldn't
10 those same factors have given you an idea
11 of what Mr. Knotts had been saying in the
12 megaphone?

13 A. Again, sir, I responded to a noise
14 complaint of a man with a megaphone. I
15 did not observe what he was saying into
16 the megaphone. I verified the noise
17 complaint. Patrolman Paratore took
18 enforcement action.

19 MR. HARRELL: Thank you.

20 THE COURT: Recross?

21 RECROSS-EXAMINATION

22 BY MR. PLESICH:

23 Q. The words that were spoken, did that come
24 into factor as a factor for you citing
25 this individual?

1 A. Patrolman Paratore citing him, not at all.

2 MR. HARRELL: Your Honor, we are -- I
3 assume we're done with this witness, and the
4 defense has nothing else, Your Honor.

5 THE COURT: Very good. All right.
6 You can step down, Patrolman. Thank you.

7 THE WITNESS: Thank you, Your Honor.
8 (Witness excused.)

9 MR. HARRELL: Your Honor, I would
10 again ask that we -- assuming that he would
11 be a likely witness in trial, we would ask
12 you to invoke that rule.

13 THE COURT: I'm sorry. I didn't hear
14 the end of that with the door.

15 MR. HARRELL: Sorry. We'd like to
16 invoke the rule on witnesses with regards to
17 the sergeant for any argument.

18 THE COURT: All right.

19 Officer, you can go ahead and step
20 out. We'll come get you if we need you.

21 And as soon as he gets out, you can
22 proceed, Counsel.

23 MR. HARRELL: Thank you.

24 Your Honor, as we argued in our
25 brief, the issue here -- I want to be clear

1 -- I guess let me start (unintelligible).

2 THE COURT: Okay.

3 MR. HARRELL: So we're not arguing
4 police officers or prosecutors are devoid of
5 their discretion. Especially in the case of
6 prosecutors, they're elected officials. We
7 understand that they live in a world of
8 limited resources, policy to be made.

9 However, this is clear that the types
10 of factors you can include to be
11 constitutionally permissible, I think the
12 quintessential examples would be race or
13 sex.

14 If an officer sees ten people
15 speeding and he elects to pull over only the
16 black ones, that is, of course, a violation
17 of equal protection clause, whereas other
18 types of -- and I believe we mentioned a
19 list of some factors the courts have found
20 permissible, including notoriety with
21 something that is constitutionally
22 permissible.

23 Here we are looking at the sergeant's
24 investigation tactics. And I think his
25 testimony was really telling. When asked at

1 a surface level what he did with other
2 complaints, he mentioned he looked into it.
3 But on the original examination and on cross
4 -- or sorry, redirect, Your Honor -- he
5 looked into it, it involved in his own words
6 standing there.

7 And I think that really is our case
8 in a nutshell. With the -- the officer
9 received two complaints which are both
10 covered under the same ordinance. And for
11 one complaint, the officer surveilled the
12 scene. The officer mentioned that he
13 located someone who was a likely fit; that
14 he interviewed other officers, and he --
15 once -- once Officer Paratore was
16 sufficient, who he mentioned was not his
17 formal partner, but he arrived with him at
18 the scene, once Officer Paratore had been
19 sufficiently apprised of that situation,
20 they cited Mr. Knotts.

21 In contrast, the sergeant testified
22 that his investigation of the other
23 complaints involved standing there.

24 I'm not an officer, I've never been
25 an officer, I don't claim to be an expert on

1 the case, but this court can absolutely find
2 that that is -- that demonstrates the issue
3 here, which is not that the Cuyahoga Falls
4 Police Department can't cite you for
5 violation of an ordinance, but what Cuyahoga
6 Falls did cite for violating an ordinance on
7 that day, that the only conceivable
8 difference between these two similarly
9 situated individuals was that one was
10 engaged in constitutionally protected
11 speech; was that one was exercising their
12 civil liberties.

13 That -- and again, the courts have
14 made that clear is not a permissible factor
15 to include when considering an investigation
16 and a prosecution decision.

17 So we are not asking this court to
18 micromanage the day-to-day actions of police
19 officers. Courts at all levels have, I
20 guess, warned against sort of that
21 (unintelligible) quickly, that kind of
22 micromanagement is not authorized by the
23 constitution, nor is it particularly wise.

24 However, when the only conceivable
25 difference between two similarly situated

1 people is a constitutionally impermissible
2 factor, mainly the exercise of rights, then
3 the equal protection order clause of the
4 14th Amendment demands that this prosecution
5 be dismissed with prejudice.

6 Thank you.

7 THE COURT: All right. Mr. Plesich.

8 MR. PLESICH: Oh, I would just say
9 the complaint that came out was for noise.
10 It was from a third party. Once the officer
11 gets there he does investigate and
12 determines there's a megaphone causing this
13 noise. To go out there and have now a
14 complaint from the other side suggests that
15 the speech from the other side, that
16 somehow should also be charged is
17 ridiculous. It's almost like I'm getting
18 charged so why aren't they getting charged.

19 My officers have discretion, but they
20 also have their expertise and training and
21 experience. And the fact he was out
22 there --

23 MR. HARRELL: Objection. Assumes
24 facts not in evidence. There's no testimony
25 to expertise.

1 MR. PLESICH: Well, he's suggesting
2 -- he's criticizing in his closing my
3 officer's technique of investigating the
4 crime that he claims the other side made.
5 So that is an officer --

6 THE COURT: It's closing. I'll allow
7 it.

8 Go ahead.

9 MR. PLESICH: Well, he brought it up
10 in his closing.

11 THE COURT: Yeah.

12 MR. PLESICH: And I'm just
13 pointing --

14 THE COURT: Right.

15 MR. PLESICH: -- that fact out.

16 So at the same time, I would also
17 suggest that both sides had the right to be
18 out there speaking their minds, not just
19 their side, not just the Defendant. And it
20 was not until the megaphone was introduced
21 (unintelligible) that it became a problem.
22 Not just a megaphone, a megaphone that was
23 able to project noise into a home on the
24 other side of the building.

25 And so the officer testified that

1 he'd been out there, he's been out there in
2 the past, and nobody's there stopping
3 anybody's message. They're out there. They
4 were out there specifically on that day and
5 didn't take any action until the noise
6 complaint came in.

7 So that's really the focus of the
8 case, the investigation, the charge. It's
9 the noise, not the message.

10 THE COURT: All right. Thank you,
11 Mr. Plesich.

12 Rebuttal?

13 MR. HARRELL: Very quick, Your Honor.
14 I want to be clear. We should not be saying
15 the complaint. It should be the complaints.

16 As far as Your Honor considering
17 information about it being so loud it
18 bounced off another side of a building, the
19 officer testified that all of that knowledge
20 was learned after the issuance of the
21 citation. I don't think you should consider
22 it at this point.

23 Similarly, there was nothing on the
24 record at this point as to the officer's
25 expertise, that he may or may not have used,

1 and I think those points should not be
2 taken. Thank you.

3 THE COURT: All right. Thanks
4 everybody. I will take it under advisement.
5 I will get something out as quick as I can.

6 MR. HARRELL: Appreciate it, Your
7 Honor.

8 THE COURT: Thanks, everybody.

9 MR. PITCHFORD: Thank you.

10 (Proceedings concluded.)

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C E R T I F I C A T E

I, KELLEY E. SPEARS, RPR, Certified Shorthand Reporter, Summit County, do hereby certify that I transcribed in Stenotypy the audiotaped proceeding held in the foregoing-entitled matter, and I do further certify that the foregoing-entitled TRANSCRIPT OF PROCEEDINGS, consisting of 57 typewritten pages, is a complete, true, and accurate record of said matter to the best of my skill and ability.

I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

Kelley E. Spears-----

KELLEY E. SPEARS, RPR
Certified Court Reporter